

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.286 of 2010

JUDGMENT:

The respondents/ Andhra Pradesh State Road Transport Corporation (for short 'APSRTC'), aggrieved by the award of the tribunal dated 25.09.2008 in O.P.No.554 of 2006 maintained the claim under Section 166 of the Motor Vehicles Act by the claimants/ wife and mother of the deceased-M.Ravi Kumar, aged about 25 years, for a compensation of Rs.7,00,000/-, from the contest having held that the accident was the result of contribution of the deceased along with two others in proceeding on the two wheeler also in fixing 20% by fixing 80% on the liability of the APSRTC, since awarded Rs.5,46,400/- with interest at 7.5% p.a., maintained the appeal, not only on the percentage of the contributory negligence but also on the quantum excessive.

2. Learned counsel for the appellants/ APSRTC reiterated the contentions in the grounds of appeal and in the oral submissions that the tribunal ought to have considered the total negligence on the part of the deceased and two others and proceeding three persons on the two wheeler and there is no fault of the bus for their fault and Ex.A5-M.V.I.Report also speaks there is a bend of the handle of the scooter and the bus not even with scratches and thereby to fix the liability on the deceased if not at least equal liability if at all on the RTC bus and the other scooterist and insurer not made parties for 50%at best apart from deceased

of 50% and reduce the quantum and the other contest is the multiplier taken and multiplicand arrived at are also exorbitant to reduce.

3. Whereas, it is the submission of the learned counsel for the claimants/ respondents that the award of the tribunal holds good and there is nothing to interfere but for no cross objections to enhance and to dismiss the appeal including from the factum of bus driver not even examined and the charge sheet filed against the bus driver and not even third vehicle scooterist.

4. Heard and perused the material on record.

5. The manner of accident from the report shows the deceased was riding the two wheeler with two other persons and once scooterist with pillion rider and the cloth bundles for washing taking in load by keeping in between and the deceased bike touched the one of the bundles of the cloth and in the mean time due to the rash and negligent driving of the driver of the APSRTC bus coming in opposite direction dashed and the deceased was succumbed to injuries and while under treatment and the other two persons of the bike sustained injuries. From that the tribunal came to the conclusion 20% contribution of the deceased. From the above evidence, there is nothing to show much less to implead the scooterist.

6. Coming to contribution of 20% of the deceased taken by the tribunal and its correctness concerned, Ex.A5-M.V.I.Report, on examination of three vehicles in question found even a

scratch to the other vehicles but right handle of the bike of the deceased there was a bend to say there from bike fallen.

7. Coming to the Post mortem report-Ex.A6, the death was due to multiple injuries and there are as many as 17 injuries external as noted in the Post mortem report and mainly there is temporal bone fracture with scalp injury appears from the fall apart from multiple injuries. The tribunal did not advert to these aspects properly. No doubt, the contributory negligence depends upon several factors including size of the vehicle, condition of the road, place and manner of accident and who was in wrong side and to what extent. Once the evidence clearly shows main contribution is of the deceased though size of the vehicle is also criteria, it is just to fix 30% contribution of the deceased by fixing 70% of the RTC. From this, now coming to the quantum of compensation, the tribunal from evidence showing the deceased was mason and the accident was dated 26.12.2005, taken his earnings at Rs.4,500/- p.m. In the absence of proof of earnings even taken Rs.3,600/- as reasonable, even taken the prospective earnings, it no way requires interference and what the tribunal deducted of 1/3rd also no way requires interference. From this if 1/3rd is deducted towards personal expenses out of Rs.4,500/-, it comes to Rs.3,000/- p.m. and Rs.36,000/- p.a. and the same is multiplied with the multiplier '18' (applicable from the age of the deceased) it comes to Rs.6,48,000/-. Apart from it, the claimants are entitled to Rs.50,000/- towards loss of consortium, Rs.10,000/- towards loss of estate, Rs.25,000/- towards funeral

expenses and even taken Rs.17,000/- towards expenses for treatment, transport charges and attendant charges. Thus, the total compensation comes to Rs.7,50,000/-. Out of it, 70% comes to Rs.5,25,000/-, what the tribunal awarded is Rs.5,46,400/- thereby to reduce.

8. Accordingly and in the result, the appeal is partly allowed by reducing compensation from Rs.5,46,400/- to Rs.5,25,000/- with interest at 7.5% p.a. from the date of petition till realization. In other respects, the award of the tribunal holds good. There is no order as to costs.

9. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Date:21.10.2016
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Dr. B. SIVA SANKARA RAO, J

